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RULE PROPOSALS

AGRICULTURE

DIVISION OF PLANT INDUSTRY

42 N.J.R. 2877(a)

Proposed Readoption with Amendments: N.J.A.C. 2:20

Proposed Repeals: N.J.A.C. 2:20-9

[Click here to view Interested Persons Statement](#)

Quarantines

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-21.2, 4:1-21.5, 4:1-21.6, 4:6-20 and 4:7-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-299.

Submit written comments by February 4, 2011 to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 2:20 expires on November 29, 2010. As the Department has filed this notice of proposed readoption with the Office of Administrative Law prior to the expiration date, the expiration date is extended 180 days to May 28, 2011, pursuant to N.J.S.A. 52:14B-5.1c. The Department of Agriculture has reviewed the rules proposed for readoption and amendments and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978), and consistent with Executive Orders 2 (2010) and 4 (2010). The Department is proposing to repeal N.J.A.C. 2:20-9. The Pine shoot beetle has been scientifically determined through surveillance activities to be established widespread throughout New Jersey, but causing minimal damage. The entire State is regulated by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) under 7 CFR 301.50, and thereby Subchapter 9 is duplicative, unnecessary and burdensome to industry (Executive Order 2 (2010)).

The introduction of dangerously injurious insect pests or plant pathogens from another state or foreign country can constitute a serious threat to agriculture in New Jersey. In the current globalization of world trade, the prospect of spreading highly injurious plant pest species to new areas has increased, and there is a need to quarantine certain pests to prevent their introduction into New Jersey. Based on these factors, the New Jersey Department of Agriculture (NJDA or Department) has proposed in these rules, the means by which the agricultural industry in New Jersey can be properly protected from highly injurious invasive pest threats.

Subchapter 1 determines the Golden Nematode to be a serious threat to New Jersey agriculture and prohibits the movement of any soil from any area known to be infested with this pest.

Subchapter 2 determines the white pine blister rust to be a dangerous plant disease and prohibits the movement of certain types of plants into New Jersey that can serve as a host to the spread of the disease.

Subchapter 3 determines the Ceriferus (or Japanese) Wax Scale to be a dangerously injurious insect and if found, subject to the measures of control allowed by the Statutes of New Jersey.

Subchapter 4 determines the Mediterranean fruit fly to be a dangerously injurious insect that constitutes a menace to the fruits and vegetables of the State of New Jersey and prohibits the harboring or importation of the pest.

Subchapter 5 determines that the Africanized honeybee is a menace to the practice of apiculture and sets forth rules to prevent its importation into New Jersey.

Subchapter 6 determines that the Khapra beetle is a highly injurious insect and constitutes a menace to food and grain stocks and sets forth rules to prevent importations, as well as control measures should the pest be found.

Subchapter 7 describes the roles and responsibilities of the Department, in cooperation with USDA APHIS, in the inspection and monitoring of nursery stock imported from foreign countries.

Subchapter 8 describes the roles and responsibilities of the Department, in the inspection, monitoring and control measures for the Asian Longhorned beetle (*Anoplophora glabripennis*). The Asian Longhorned beetle is an invasive, foreign insect pest that is a serious threat to hardwood forests and shade trees. In 2002, this pest was discovered in Jersey City, Union County, New Jersey. A quarantine area was established to prevent the spread of the insect by the movement of infested wood, firewood and nursery stock. Following a successful eradication program in the Jersey City-Hoboken Quarantine area, quarantine measures were rescinded in those sections of Hudson County. In 2004, a second, larger infestation was identified in Carteret, Middlesex County, New Jersey. Subchapter 8 prescribes a quarantine area and measures to prevent the spread of the insect, which was later amended following additional findings to include areas of Woodbridge and Clark, Elizabeth, Linden and Rahway in Union County.

Subchapter 9 describes the roles and responsibilities of the Department, in the inspection, monitoring and control measures for the pine shoot beetle, *Tomicus piniperda*.

Proposed Amendments and Repeals

The Department proposes to amend N.J.A.C. 2:20-5.1 to remove restrictions on hives with some genetic impurity and to remove limits on [page=2878] certain vehicles. Advances in honeybee management have shown that requeening with healthy queens will mitigate the dangers posed by Africanization but will result in some genetic impurity. Deletion of the genetic purity language avoids the unnecessary destruction of honeybee hives. There are also no longer scientifically verifiable risk factors present to justify the vehicle prohibition that can impede interstate movement of bees for pollination. The vehicle limiting language is proposed for deletion.

At N.J.A.C. 2:20-8.4(a)1, the Department proposes to amend the list of articles to make it consistent with the updated Federal list of host genera by adding *Cericidiphyllum* (katsura) and to make technical revisions for consistency with scientific naming conventions.

The Department proposes to repeal Subchapter 9. The entire State is under Federal quarantine for this pest. Movement of regulated materials is under a Federal compliance agreement. There is no need for separate State quarantine and associated movement restrictions.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will continue to affect certain plant growers and dealers conducting business within New Jersey. The social impact of the rules will be of benefit to the plant growers, farmers and consumers. Prevention and exclusion of plants and plant materials infected or infested with these dangerously injurious insects and plant diseases has served to protect the agricultural and natural resources of the State of New Jersey.

The rules continue to provide for the safe importation of nursery stock from foreign countries, under the watchful eye of trained inspectors. They also permit and promote greater diversity of horticulturally desirable cultivars and the introduction of new varieties, while at the same time protect against the importation of exotic plant pests and potentially dangerous insects.

Economic Impact

The purpose of the rules proposed for readoption is to provide protection from four highly destructive and injurious insects not native to North America, a destructive plant disease that was eradicated from the State in the 1930s and a plant parasitic nematode only known to be established in North America in parts of the State of New York and Canada. The least expensive and most efficient method of control of these pests is to prevent their entry and establishment in this State and country.

The economic impact of the introduction and establishment of any of the four foreign insect pests into New Jersey and North American agriculture would be devastating as they are capable of untold damage if unabated. Establishment of the Golden nematode would have serious impacts on tomato and potato production in New Jersey, as well as, limiting or preventing interstate and international trade of New Jersey grown nursery stock. Reintroduction and establishment of the white pine blister rust fungus in New Jersey would lead to the loss of highly valued ornamental or landscape plantings of white pines, white pines planted in Christmas tree plantations, nurseries and for conservation purposes, and native white pines in forests and parks throughout the State.

Relatively inexpensive and effective control measures are available through the proper use of pesticides and other control agents applied early in the infestation or outbreak. The cost of such treatments would fall upon the businesses

affected in proportion to the locations of the infestation or amount of acreage affected and the difficulty of treatment. Delay in treatment requiring prolonged quarantine of premises or stock, of course, will affect the operation of the business.

There is no provision in the statutes nor are funds provided by the Legislature for the reimbursement of the destruction of any infected crop, stock or plant. It may be that costs of control due to the virulence or large-scale spread of such an outbreak could be borne by the Department through a wide area control program. If that should occur, it would be the Department's responsibility to secure funding to deal with the problem either in cooperation with the Federal government or on its own.

The prohibition of Africanized Honeybee and germplasm into New Jersey protects the beekeeping industry and the health of the general public of New Jersey. In areas of suitable temperate climate, the survival traits of African queens and colonies outperform western honey bee colonies. This competitive edge leads to the dominance of African traits allowing for more aggressive bees that have the ability to swarm more frequently as a response to stress or lower food stores. These bees defend their colonies much more aggressively and in greater numbers than the European *spp.* predominately used in the Apiary industry.

The rules establishing postentry quarantine procedures provide for the safe importation of nursery stock from foreign countries. The Department believes that the proposed limitation on the quantity of plants persons will be permitted to import is necessary to ensure that sufficient State resources are available to carry out postentry quarantine inspection and monitoring services, enable more growers to participate in the program and allow prompt action in response to a disease or infestation problem to minimize both the costs and time involved and, therefore, will reduce the time and expense to the Department, any affected grower and the public.

Repealing Subchapter 9 (Pine shoot beetle) recognizes the widespread nature of this invasive, but less serious, pest in New Jersey; and lessens the burden on Christmas tree growers and the horticultural and landscape industry that solely sell and distribute pine species within New Jersey, Pennsylvania, New York and the northeast states. As a result only those businesses shipping outside the multi-state Federally quarantined area need comply.

Federal Standards Analysis

The requirements imposed at N.J.A.C. 2:20-1 are the same as those imposed by Federal law, 7 CFR 301.85-3(b), namely, that soil from areas infested with golden nematode may be moved into or through New Jersey to Federally approved laboratories for scientific purposes.

The requirements imposed at N.J.A.C. 2:20-4 are the same as those imposed by Federal law, 7 CFR 301.78-3(a), which requires the State to have adopted equivalent restrictions on the movement of regulated articles, if Mediterranean fruit fly has been detected.

The requirements imposed at N.J.A.C. 2:20-5 are the same as those imposed by Federal law, 7 CFR 322.1(d), requiring that honeybees or honeybee semen imported into the State do not contain genetically undesirable germ plasm (Africanized traits).

N.J.A.C. 2:20-6 determines that the Khapra Beetle constitutes a menace to the food and grains stocks of the State of New Jersey, and exceeds those imposed by Federal rule. Federal authority to gain entry to inspect suspected infested warehouses ends once an imported product leaves the port of entry. Federal agencies cooperatively work with State agencies in conducting surveys and control measures for this destructive insect; this subchapter provides public notice to high risk importers of New Jersey's concern to protect its food and grains stocks from this serious damaging insect pest.

The requirements imposed at N.J.A.C. 2:20-7 imposes requirements that are more restrictive than those imposed by Federal law (at 7 CFR 319.37-7). The rules set limits on the total numbers of plants permitted to be imported yearly by

each grower to be grown under post-entry quarantine. Current USDA APHIS rules set no limit on the total numbers of plants imported. The Department has determined that the annual importation limit is necessary to enable the Department to continue to provide effective and efficient post-entry quarantine inspection and monitoring services.

Importation of plants without limit will cause tremendous strain on the State's inspection resources, as is being seen in the States of Washington and Oregon. Permitting importation without limit, would severely outstrip the Department's ability to carry out quarantine inspection and monitoring services properly. The Department believes that importation of large quantities of plants would jeopardize agricultural and/or natural resources due to increased likelihood of the establishment of exotic pests or diseases. The Department believes that the proposed annual importation limit in the proposed rules is necessary to ensure that sufficient State resources are available to carry out quarantine inspection and monitoring services properly, and to enable more growers to participate in the program. The proposed limitation will impose no direct costs on growers, although it may result in the loss of profits that might be realized from the sale of imported plants. The Department believes the benefits to the State agriculture industry and the citizens of New Jersey in [page=2879] ensuring the continued availability of quality quarantine services and the protection of the public health, safety and welfare outweigh this potential profit loss.

The requirements imposed at N.J.A.C. 2:20-8 for Asian longhorned beetle are the same as those imposed by Federal law, 7 CFR 301.51, in which the State adopted parallel restrictions on the movement of regulated articles, to control and limit the spread of Asian longhorned beetle within New Jersey.

The Department is proposing to repeal N.J.A.C. 2:20-9. The Pine shoot beetle has been scientifically determined to be established widespread throughout New Jersey, thus the entire State is regulated under 7 CFR 301.50, and thereby Subchapter 9 is duplicative and burdensome to industry (see Executive Order 2 (2010)).

Jobs Impact

The rules proposed for readoption and the proposed amendments and repeals are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendments and repeals should have a positive impact on New Jersey's agriculture industry. The rules will afford protection to farmers from the introduction and establishment of a number of highly destructive plant pests not found in New Jersey. The khapra beetle is recognized as one of the world's most destructive insect pests, and could seriously damage agriculture in New Jersey and the United States should it become established. Readoption of the post-entry quarantine rules will allow the safe importation of horticulturally desirable nursery stock from foreign countries and allow trained State and Federal inspectors to monitor the plants for two years to ensure they are free of dangerously injurious insects and diseases after which time period the growers can then release them for sale.

Regulatory Flexibility Analysis

The rules proposed for readoption do not, in and of themselves, impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, should control and quarantine measures have to be implemented, then the burden of undertaking plant pest remedial measures may be imposed upon the individual business affected. This burden, of course, is in counterpoise to the overwhelming risks that the unabated spread of these plant pests would have upon the rest of New Jersey and North American agriculture. Thus, a fuller explanation of the ramification of actions that could be undertaken under these rules is needed.

The rules proposed for readoption do not impose any reporting or recordkeeping on the part of any business or

individual. However, accurate records that are kept in the ordinary course of the nursery business are extremely helpful in preventing the spread of plant pests. No professional services are likely to be needed to comply with this rule. In the event that quarantine pests are discovered, the professional services of a licensed, certified pesticide applicator may be required to apply certain pesticides and other control agents.

The Department believes that the costs of compliance with the rules proposed for readoption with amendments and repeals depend on when pests are detected, and when pesticides and other control agents are applied. Relatively inexpensive and effective control measures are available through the proper use of pesticides and other control agents applied early in the infestation or outbreak. The cost of such treatments would fall upon the businesses affected in proportion to the locations of the infestation or amount of acreage affected and the difficulty of treatment. Delay in treatment requiring prolonged quarantine of premises or stock, of course, would affect the operation of the business and would be expected to have a disproportionately harsher impact on a small business with smaller resources.

The Department has provided no lesser or differing requirements based upon business size. The Department has determined that in the rules proposed for readoption with amendments and repeals represent the minimum standards necessary to protect against the potential endangerment to the agricultural and natural resources of the State that might result from the potential establishment of exotic pests or diseases that may be associated with live, growing plant materials imported from foreign countries.

Smart Growth Impact

The rules proposed for readoption with amendments and repeals are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The rules are consistent with the State's smart growth goals as they encourage the continued viability of the State's farmers by protecting New Jersey's agricultural industry from highly injurious invasive pest threats. Therefore, the Department anticipates that there will be a positive impact.

Housing Affordability Impact

The rules proposed for readoption with amendments and repeals will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules provide the means to protect New Jersey's agricultural industry from highly injurious invasive pest threats.

Smart Growth Development Impact

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules provide the means to protect New Jersey's agricultural industry from highly injurious invasive pest threats.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:20.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 2:20-9.

Full text of the proposed amendments to the rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:20-5.1 Africanized Honeybee (*Apis mellifera scutellata*); prohibitions

It has been determined by the New Jersey State Board of Agriculture that the Africanized Honeybee (*Apis mellifera scutellata*) is a dangerously injurious insect and constitutes a menace to the practice of apiculture in New Jersey. The

Africanized Honeybee is not native to the State of New Jersey. The keeping or importation of Africanized Honeybees in any stage of development, including honeybees with characteristics identifiable with the subspecies (*Apis mellifera scutellata*), [regardless of the purity of the genetic strains of the bees,] fresh or frozen bee sperm, equipment, shipping and storage containers that have been used at an apiary, unprocessed comb[, vehicles that have been used to carry regulated articles, other than fresh or frozen bee sperm, is] **are** prohibited. Any other product, article or means of conveyance of any character whatsoever, if in the determination of the Department of Agriculture, presents a risk of the spread of the Africanized Honeybee, shall be prohibited.

SUBCHAPTER 8. ASIAN LONGHORNED BEETLE

2:20-8.4 Regulated articles

(a) Regulated articles are as follows:

1. Firewood, green lumber, nursery stock[, or any material living, dead, cut[, or fallen off logs, stumps, roots, branches or debris of half an inch or more of the following genera: [Maple (*Acer* spp.), Horsechestnut (*Aesculus* spp.), Willow (*Salix* spp.), Elm (*Ulmus* spp.), Birch (*Betula* spp.), Mimosa (*Albizia julibrissin*), Hackberry (*Celtis* spp.), Ash (*Fraxinus* spp.), Sycamore/Planetree (*Platanus* spp.), Mountain Ash (*Sorbus* spp.), and Poplar (*Populus* spp.)] **Acer (maple), Aesculus (horse chestnut), Albizia (mimosa), Betula (birch), Celtis (hackberry), Cercidiphyllum (katsura), Fraxinus (ash), Platanus (sycamore), Populus (poplar), Salix (willow), Sorbus (mountain ash), and Ulmus (elm).**
2. (No change.)